No. 91-1741

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In The

Supreme Court of the United States

October Term, 1991

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.,

Petitioners,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, HELEN M. BOLEN,

Respondents.

Petition For Writ Of Certiorari To The California Supreme Court

BRIEF OF AMICUS CURIAE LOS ANGELES COUNTY TRANSPORTATION COMMISSION IN SUPPORT OF RESPONDENTS

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INTRODUCTION AND SUMMARY

Public transit stations have been shown to enhance the value of nearby property. [App. 7, 89-90.[1]] Levying benefit assessments on property specially benefitted by public projects is a common, and constitutional, method of recouping some of the cost of such projects from property owners who receive special benefits from them. Petitioners own property near transit stations which will be benefitted by proximity to those stations. [App. 9.] They have asserted constitutional arguments in an attempt to avoid paying their fair share.

Amicus curiae Los Angeles County Transportation Commission ["LACTC"] is the public agency principally in charge of planning, construction, and financing of all public rail transit lines in the County of Los Angeles. The assessments involved in this matter will help defray the costs of constructing transit stations, and, if those assessments are not levied, LACTC will have to provide the funds for them by diverting money from other parts of the transit system.

Petitioners make basically two arguments, and they are inconsistent:

1. That a California special benefit assessment statute is unconstitutional because it does not directly equate voting strength and liability for special benefit assessments; and

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[1] References throughout this Brief are to page numbers of the Petition for Certiorari in opposition to which it is filed [Pet.], the Appendix attached to that Petition [App.], and to the Joint Appendix filed in the state appellate courts [JA].

2. That the same statute cannot constitutionally omit tenants from participation in voting on formation of special benefit assessment districts.

Granting of the petition for certiorari is not appropriate in this case for the following reasons.

• Petitioners complain that the allocation of votes on a proposal to form an assessment district differs from the allocation of liability for special benefit assessments. They omit to mention, however, that they never satisfied, or attempted to satisfy, the requirements for holding such an election. The California statute involved provides for voting on a proposal to form an assessment district if owners of 25 percent of the assessed value of property in the proposed district petition for such an election. [California Public Utilities Code § 33002.2.] No such petition was filed, and the trial court found that petitioners did not make even ordinary efforts to comply with the statutory requirement. [App. 94; JA 215, 220, 840.] Because no such petition was filed, no vote on the proposed benefit assessment districts was ever held. Therefore, petitioners' complaint is theoretical.

• There is no constitutional requirement that voting strength in an assessment district election must be determined on the same basis as the assessments are imposed.

• Petitioners have misstated the purpose of the assessments involved here. Petitioners describe the use of assessment proceeds in terms which make it appear that those proceeds would be used to finance an entire transit

system. [Pet. 8, 24.] This overstatement is designed to create the impression that the benefit assessment districts have a broader purpose than they actually have, and thus to support petitioners' argument that the districts have general governmental powers so that strict scrutiny should be applied. In fact, it is provided by statute that the proceeds of district assessments can only be used for stations located within the district itself. [California Public Utilities Code § 33002(d).]

• Petitioners make light of the issue of administrative convenience as justification for apportioning voting strength in an election on forming an assessment district. Property tax assessments are readily available and can be consulted to make a list of eligible voters in a proposed assessment district. In order to determine the square footage of buildings throughout an assessment district, it is necessary to canvass the entire district – a time consuming and expensive task. It is one thing to carry out that task after an assessment district has been formed. It is quite another to impose the requirement of determining square footage at the early stages of the formation of a proposed district when its boundaries can be adjusted and when it is necessary to complete the formation process rapidly to meet schedules of public meetings, review by local authorities, and completion of the district formation process before information has become stale.

• Petitioners assert that tenants would have assessments passed on to them and that tenants therefore have to be included in the voting on an assessment district. In so arguing, however, petitioners ignore the fact that compiling a voting roll on the basis of the interests of tenants

in assessments would be a virtually impossible administrative task. Locating all tenants would be difficult enough. Examining their leases for pass through provisions would be impossible, and voting rights should not be determined by the provisions of private contracts.

- Blanket inclusion of all tenants as voters would contradict the very proportionality argument on which petitioners primarily base their case. There is no way to determine from public records which tenants would bear the burdens of the district assessments or in what proportions.

- The principal claim raised here, that each voter's proportional voting strength should equal that voter's proportional liability for special assessments, is not of widespread interest. The opinion of the California Supreme Court in this matter is the first appellate decision to discuss that issue at any length and to rule directly on whether such proportionality is constitutionally required. The issue arises here only because of the unusual circumstances of the present case which involves assessment districts of such extremely limited powers that voting strength could theoretically be made proportional to the effect on the voter of the issue being voted on. Such proportionality is impossible in most elections of broader scope. This case is rendered even more unique because it involves the effect of California's Proposition 13, which of course has no application in other states. The fact that such proportionality might be imposed in the unusual situation here is no reason for this court to make it a universal principle of constitutional law. There is no reason for this court to take up the

issue, which is raised only hypothetically in the present case.

1. INTEREST OF AMICUS CURIAE.

The action below was brought to determine the validity of special benefit assessments to finance part of the costs of stations for the "Red Line," a public transit project in Los Angeles, California.[2] California Public Utilities Code §§ 33000 through 33020 were passed by the California Legislature in 1983 to provide for establishment of special assessment districts in areas near proposed rapid transit stations in Los Angeles County. The assessment statutes provide that the Board of Directors of the Southern California Rapid Transit District ["SCRTD"] may establish special assessment districts in areas benefitted by proximity to rail transit stations, establish district assessments on real property within a district, and use the proceeds to build rapid transit stations in the district.

At the time the action was commenced, SCRTD was responsible for construction of the first segment of the Red Line, a subway which is referred to as MOS-1.[3] Subsequently, LACTC became the public agency principally responsible for construction and financing of the

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[2] What is now called the "Red Line" was at one time referred to as "Metro Rail". It is a rail transit line running underground from the Union Station in downtown Los Angeles to the San Fernando Valley, another part of the city.

[3] For purposes of construction, administration, and financing, the Red Line is divided into what are referred to as "Minimum Operable Segments," or "MOS."

Red Line and for the transit stations for which the assessments are to be levied.

LACTC has contracted to be primarily responsible for the design and construction of the second and third segments of the Red Line, known as "MOS-2" and "MOS-3." LACTC has been assigned uncompleted contracts relating to MOS-1. LACTC has become obligated under "full funding" agreements with the Federal Transit Administration, formerly the Urban Mass Transit Authority, to provide local funds to make up the difference between the costs of MOS-1, MOS-2, and MOS-3 and the funds received for those projects from federal and state sources. Pursuant to these agreements, LACTC will have to provide funds for transit stations from other sources if the assessments for financing of those stations are held invalid. LACTC would also be primarily responsible for any redesign or reduction in transit stations necessitated by loss of benefit assessment funds.

Amicus curiae LACTC is thus the public entity with the greatest interest in the special benefit assessments for transit stations which are the subject matter of this case.[4]

All parties named in the petition have consented to the filing of an amicus curiae brief by the Los Angeles County Transportation Commission.

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[4] Legislation has just been enacted in California to consolidate LACTC and SCRTD. As of April 1, 1993, the two agencies will cease to exist, and all of their functions and powers will be taken over by a new agency to be known as the "Los Angeles County Metropolitan Transportation Authority." See California Assembly Bill 152, signed by the Governor on May 20, 1992.

2. THE RATIONAL BASIS STANDARD APPLIES IN THIS CASE, NOT STRICT SCRUTINY.

If an election involves a public entity with general governmental powers, strict scrutiny applies, and deviation from the principle of one-person, one-vote is allowed only on the basis of compelling necessity. On the other hand, if an election involves only a special purpose district, the much less demanding reasonable basis standard is applied. Under the latter test, a statute is held to be constitutional if any state of facts reasonably may be conceived to justify limiting the voting to property owners. *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 732, 35 L.Ed.2d 659, 93 S.Ct. 1224 (1973).

The petition addresses the standard of constitutional review only in connection with the second issue raised, where it is argued that strict scrutiny should be applied to the argument about including tenants in the voting group. [Pet. 24.] Petitioners argue their first issue only in terms of the rational basis standard. [Pet. 20, 21.] Because of the very limited powers of the assessment districts involved here, the rational basis test applies to both issues. The California Supreme Court analyzed this issue in detail and correctly concluded that the rational basis standard applies, not strict scrutiny. [App. 12-30.]

Three United States Supreme Court cases have allowed voting in assessment district elections to be limited to property owners. *Salyer, supra*, 410 U.S. 719, *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743, 35 L.Ed.2d 675, 93 S.Ct. 1237 (1973) (per curiam), and *Ball v. James*, 451 U.S. 355, 68 L.Ed.2d

150, 101 S.Ct. 1811 (1981). These decisions hold that voting in district elections can be limited to property owners without violating the one-person, one-vote principle of the Equal Protection Clause, where an assessment district has a limited purpose, is financed by assessments on real property in the district, and has a disproportionate effect on property owners as opposed to other residents of the district.

Ball v. James involved a challenge to the constitutionality of an election of directors of the Salt River Project Agricultural Improvement and Power District, a large district which delivered water to half the State of Arizona. It also generated and sold electric power and had become one of the largest power suppliers in the State. Although property owners were subject to assessment for obligations of the district, most of the district's revenues were generated from the sale of electric power. Nevertheless, this huge district with its extensive operations was held to be sufficiently limited in its powers that the rational basis test was applicable to determine the constitutionality of voting for its directors. Limitation of voting in district elections to property owners was upheld by this court.

The special benefit assessment districts involved here have much more limited powers than the Salt River District which was the subject of *Ball*. The only function of the present districts is to raise money from assessments on property that benefits from proximity to a Metro transit station. The money raised from district assessments can only be used to finance stations in the district. The assessments are levied only on real property in the district. The assessments are not for transit purposes in

general but only for the very limited purpose of construction of stations in the special benefit districts. The assessment districts cover very limited areas. One of the districts includes properties in the vicinity of four downtown stations and is limited to properties within one-half mile of one or more of those stations. The other includes a single station and is limited to properties within one-third of a mile of that station. [App. 7-8.] Properties within these districts will benefit from proximity to stations, and the assessments are thus limited to properties which will benefit from having the stations built. [App. 9.]

Petitioners try to make it appear that the purpose of the assessments and therefore of the assessment districts is greater than it actually is. They state that the assessments are to finance transit "operations" and that they are "assessments to finance Metro Rail." [Pet. 8, 24.] Contrary to these statements, the assessments will not provide money for an entire transit system. The assessments can only be used to finance specific transit stations within the district in which the assessments are levied. California Public Utilities Code § 33002(d) provides:

> "The revenue from a special benefit assessment, which is imposed pursuant to this chapter, or from bonds secured by such a special benefit assessment, for the purpose of financing a rail transit station or rail transit related facility located within the benefit district, shall be used only for financing of the facility for which it is levied, and that revenue shall not be used for any other purpose or the payment of any other expense of the district, including, but not limited to, transit, transportation, or operating expense."

The voting provided for under the statute involved here is not an election of directors of the district but rather a referendum-type election on a single issue – whether a specific proposed assessment is to be levied. [California Public Utilities Code § 33002.6.] As held in *Town of Lockport v. Citizens for Community Action*, 430 U.S. 259, 51 L.Ed.2d 313, 97 S.Ct. 1047 (1977), deviation from one-person, one-vote is more likely to be upheld in a referendum-type election on a particular issue than in an election of officials. Therefore this is a stronger case for allowing a vote limited to property owners than most of the other special assessment district cases, including *Salyer* and *Ball*, which involved election of directors of districts who could pass upon more issues than the levy of an assessment.

Other state court decisions have approved departure from one-person, one-vote in circumstances analogous to those involved here. See, for example, *City of Humble v. Metropolitan Transit Authority*, 616 S.W.2d 484 (Tex.Civ. App. 1982) (in election to confirm the existence of a Metropolitan Transit Authority for Houston, Texas, and surrounding area, rational basis test applied and departure from one-person, one-vote allowed); and *Chesser v. Buchanan*, 193 Colo. 471, 568 P.2d 39 (1977) (statute limiting voting to property owners in election of commissioners of tunnel district for tunnel providing transportation between two sides of state held subject to reasonable basis test and constitutional).

The very limited powers of the special benefit assessment districts involved here require only a rational basis to be found constitutional. Strict scrutiny is not applicable.

3. THERE IS NO CONSTITUTIONAL REQUIREMENT THAT VOTING IN SPECIAL DISTRICT ELECTIONS BE PROPORTIONAL TO LIABILITY FOR DISTRICT ASSESSMENTS.

Petitioners' principal argument is that voting strength should be proportional to liability for special benefit district assessments. There is no such rule of constitutional law.

The only authority cited by petitioners in support of their argument of proportionality is a statement in *Ball v. James, supra,* 451 U.S. 355, 371, that Arizona could rationally make the weight of votes dependent upon the number of acres owned by the voters. This passage is not a holding that the weight of votes must depend upon the burden imposed or benefits received. It does not mean that such correlation is the only rational basis on which votes may be apportioned. Petitioners' argument is effectively rebutted in the opinion of the California Supreme Court. See App. 32-37.

As noted by the California Supreme Court, the first of this court's cases which validated limitation of voting to land owners in special purpose elections of districts with limited powers, *Salyer Land Co. v. Tulare Lake Basin Water Storage District, supra,* 410 U.S. 719, did not involve such proportionality of benefits and voting strength. In *Salyer,* votes were apportioned in accordance with tax assessment values of land in the district, but special assessments were levied in accordance with benefits received from each project; the two are not necessarily the same. As stated in *Salyer*: "votes in those elections are apportioned according to the assessed valuation of the

land." [410 U.S. at 725.] See also California Water Code §§ 41001 through 41019 which provide for this apportionment. However, the Water Storage District assessments were apportioned "in proportion to the benefits received." [410 U.S. at 729.] This court did note that assessments for the then most recent project undertaken by the district had been apportioned equally on all land throughout the district because the commissioners charged with making the special assessment had found that all land in the district benefitted equally from that project. [410 U.S. at 734.] This court's decision does not say how assessments for other district projects had been apportioned. The statute which provided for the voting scheme in *Salyer* certainly does not require that special assessments be imposed equally on all land in the district.

The Water Storage District which was the subject of *Salyer* was organized pursuant to provisions of the California Water Code. [410 U.S. at 723-724.] Apportionment of special assessments is provided for in California Water Code §§ 46175 through 46179. The statute contemplates multiple assessments imposed on a project by project basis. [California Water Code § 46175.] As to each such project, California Water Code § 46176 provides:

> "The commissioners shall apportion the cost in accordance with the benefits that will accrue to each tract of land held in separate ownership by reason of the expenditures of the money and the completion of the project, or such units of it as have been specified for immediate construction. The assessment shall be payable in lawful money of the United States."

This section was obviously drafted in contemplation of different projects benefitting different tracts in different proportions; if the legislature had intended only to allow assessment of land in proportion to assessed value, this provision would have been unnecessary. Thus votes for directors of the Water Storage District in the election involved in *Salyer* were apportioned on the basis of tax assessment values of property owned throughout the district, while the statute allowed for apportionment of special assessments on a different basis.

The election at issue in *Salyer* did not deal with the approval of a project or with assessment for a project. It was an election of directors of the water storage district. The statute providing for water storage districts was held to be constitutional in *Salyer* even though it allowed votes to be allocated on a different basis than special assessments.

Petitioners argue that "the method of assessment" was not an issue in *Salyer*. [Petition 15, n. 8.] This is true, but neither was proportionality an issue in *Ball*, on which petitioners base their case. The statute involved in *Ball* provided that voting was to be in proportion to acreage owned, which was the same basis as potential liability for assessments and for distribution of water. The issue in *Ball*, was whether the powers of the water district were so extensive that the one-person, one-vote rule applied or whether the Arizona legislature could constitutionally limit voting to land owners. In the course of its opinion the court said that "Arizona could rationally make the weight of [land owners'] votes dependent upon the number of acres they own, since that number reasonably reflects the relative risks they incurred as landowners and

the distribution of benefits and the burdens of the District's water operations." [451 U.S. at 371.] In other words, this court said that such proportionality was rational. This court did not state that such proportionality was the only rational way to allocate votes, or that such proportionality was constitutionally required.

The real point is that petitioners have not cited a single case which holds that there is any requirement that votes in special district elections must be weighted in the same proportion as burdens. Petitioners are attempting to have this court create a new principle of constitutional law.

Proportionality between votes and burdens is rarely a possibility. It certainly does not exist in elections where one-person, one-vote applies. Proportionality is only possible for votes involving special, limited purpose districts where voting is limited to a group of persons who are particularly affected by the operations of the districts. In many cases, even limited purpose districts cannot have proportionality between voting strength and burdens or benefits. For example, in an election of district directors as in *Salyer,* proportionality between allocation of votes and burdens created by these votes is only possible after the fact because directors do not establish the district's projects or impose assessments for projects until after they are elected.

Proportionality was possible in *Ball* because assessments, water allocation, and votes could all be based on acreage owned. [451 U.S. at 359-360, 371.]

The assessment districts involved here exist for only the very limited purpose of imposing assessments to raise

money for construction of transit stations in the district. They have no other powers. Because of this very limited function, it would be theoretically possible to have the same basis for strength in voting on formation of the district as for liability for the assessments which are to be levied. In most elections for more extensive purposes, it would be impossible to equate voting strength with the effect of the vote. In most cases, proportionality between voting strength and burdens imposed or benefits received is so obviously impossible that the argument that there should be such proportionality is not even raised.

It is the very limited, single issue vote involved here which suggested the possibility of proportionality between votes and assessments. This rare circumstance is not an appropriate basis for creating a new principle of constitutional law which could not possibly be applied to most elections of broader scope.

The California Supreme Court held here that there is substantial administrative convenience in basing votes on assessed values and that there is a rational basis for so doing. [App. 36.] That decision is correct.

4. VOTING ON FORMATION OF A SPECIAL ASSESSMENT DISTRICT MAY PROPERLY BE LIMITED TO PROPERTY OWNERS. TENANTS DO NOT HAVE TO BE INCLUDED.

Petitioners' second argument is that tenants as well as property owners should be entitled to vote on formation of the assessment districts. [Pet. 23.] Petitioners recognize that this argument could only be sustained if the

strict scrutiny standard were applied instead of the rational basis test on which they base their argument regarding proportionality. [Pet. 24.]

Petitioners argue that many tenants will bear the burden of special district assessments because of "pass through" clauses in their leases. [Pet. 24.] This same pass through argument was raised and expressly rejected in *Salyer*. [410 U.S. at 731-733.] Relying on *Salyer*, the California Supreme Court rejected petitioners' pass through argument here. [App. 31-32.]

Petitioners concede that limiting voting to interested parties is constitutionally permissible. They argue that tenants should be included in the group of voters, but they fail to suggest how it could be determined which tenants should vote or how their votes should be weighted. Should all tenants vote equally even if they would not pay any part of any assessment? If such a scheme were adopted, petitioners would no doubt protest that it was unconstitutional as being disproportionate. Should voting be made dependent upon the terms of individual leases? Even identifying tenants, who frequently come and go with little public record, would be extremely difficult. A requirement of checking the terms of individual leases would create an impossible administrative burden. See the California Supreme Court opinion at App. 32.

There is a rational basis for limiting voting on formation of assessment districts to property owners [see App. 31-32], and the challenged statute which so provides is constitutional.

5. NOTHING TO BE DECIDED IN *NORDLINGER V. HAHN* REQUIRES THE GRANTING OF THE PETITION IN THIS CASE.

The unspoken basis of the petition of Santa Fe and others is the hope that, if this court holds California's Proposition 13 property tax system to be invalid in the pending case of *Nordlinger v. Hahn*, No. 90-1912, it might also hold invalid a California statute basing voting strength on assessed value of property in an election on establishment of a special benefit assessment district.

Regardless of how this court may decide *Nordlinger*, the petition here should be denied.

If petitioners' reference to *Nordlinger* has any relevance at all, it is only with respect to the first of the two issues raised in the petition, the argument of lack of proportionality between the basis of allotting votes in an election on formation of a special benefit assessment district and the basis on which the assessments are determined.

Petitioners have not included in the issues presented to this court a challenge to the statutory prerequisites for holding the election about which they complain. They have not raised here, as they did in the trial court and the California Court of Appeal, an argument about the constitutionality of the requirement that a petition signed by owners of 25 percent of the assessed value of property in the proposed assessment district must be filed in order to have a vote on formation of the district.[5] Therefore,

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[5] In rejecting this argument, the trial court found that petitioners had not made even ordinary efforts to comply with the statutory requirement. [App. 94.]

petitioners' only argument regarding the Proposition 13 system of basing assessed value on purchase price rather than on current appraisals and paper profits is that it increases the disparity between allocation of votes and allocation of special benefit assessments. That increased disparity, however, does not entitle petitioners to relief in this court.

There never was any vote on formation of the assessment districts because no petition requesting one was ever filed. Proportionality is irrelevant when no election was ever held, and voting strength never came into play.

There is no constitutional requirement of proportionality between voting strength in an election on formation of an assessment district and liability for the assessments when they are levied.

The administrative convenience (practically an administrative imperative in this case) of having a readily available list of property owners and values bearing a rough correspondence to amount of property owned justifies allocating votes in accordance with assessed values. As held by the California Supreme Court, that same principle applies despite the effects of Proposition 13. [App. 34, n. 8.]

The issues raised by petitioners do not justify the granting of this petition for certiorari regardless of the outcome of *Nordlinger*. The argument that proportionality between voting strength and special assessments is required by the Constitution had not been directly ruled upon in any reported case until the decision of the California Supreme Court in this matter. There is no conflict in decisions on the point. The fact that it has not been the

subject of appellate decisions shows that it is not an issue of great moment which requires the attention of this court. This is an unusual issue which can only arise in the case of a limited purpose district with operations which have similar effects on all property owners in the district. Even if this court were disposed to consider the issue, it should only do so in a case where there actually is an election and in which disparity of voting power and special assessments actually occurs, not where there is merely a hypothetical disparity as in the present case.

CONCLUSION

The issues raised by the petition are obscure and arise only because of the unusual facts of this case. The principle of proportionality between voting strength and burdens of the results of the vote which petitioners call upon this court to establish is novel and would be unsound if imposed. The issues raised do not warrant the attention of this court. The decision of the California Supreme Court is correct.

The petition for writ of certiorari should be denied.

Respectfully submitted,

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